APPEAL NO. 020562
FILED APRIL 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 24, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter (December 26, 2001, through March 26, 2002). The claimant appeals on sufficiency of the evidence grounds. The respondent (carrier) replies, urging affirmance.

DECISION

Affirmed.

PRELIMINARY MATTERS

The claimant asserts that the hearing officer erred by not specifying what problem she had with the sufficiency of the narrative report. Section 410.168 provides that the hearing officer shall issue a written decision that includes findings of fact and conclusions of law. We note that the hearing officer made findings of fact and conclusions of law, as required.

The claimant objected to the admission of Carrier's Exhibit Nos. 3, 4, and 5 because those exhibits contained underlinings and highlighting. The claimant offered to provide unmarked copies of the exhibits. The hearing officer stated that she would read the entirety of each document, and overruled the objections. On appeal, the claimant cites Texas Workers' Compensation Commission Appeal No. 961801, decided October 23, 1996, for the proposition that when adulterated records are offered in evidence, the proper procedure for the hearing officer is to halt the proceedings, request a copy of the records directly from the doctor, and provide copies of the records to each party with an opportunity to comment on the records before making a decision. The claimant is seeking a far broader application of the decision in Appeal No. 961801 than is warranted. That case dealt with assertions that the records were altered, and the hearing officer decided to get a copy from the doctor. The hearing officer got the records but then decided the case without giving the parties an opportunity to see the evidence that was being relied upon. This case does not concern allegations of alteration of the records, and issues about what was or was not in the records. The hearing officer indicated she would consider the entirety of each document, and we can credit her statement. We discern no prejudice.

THIRD QUARTER SIBs

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), as applied to this case, defines good faith as follows:

Good Faith Effort. An injured employee has made a good faith effort to

obtain employment commensurate with the employee's ability to work if the employee:

> (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

We have reviewed the evidence, the hearing officer's decision, and the applicable rules of the Texas Workers' Compensation Commission, specifically Rule 130.102(d)(4), which concerns how the "good faith search" requirement for SIBs is met when a search for employment is not made due to the contention that there is a total inability to work.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the third quarter. The hearing officer determined that, during the qualifying period (September 13 through December 12, 2001), the claimant was unable to perform any type of work in any capacity, and that there were no other records which show that the claimant is able to return to work. The hearing officer further determined that the claimant failed to provide a narrative report from a doctor which specifically explained how the claimant's injury caused a total inability to work, and, therefore, that the claimant did not make a good faith effort to search for employment commensurate with his ability to work during the qualifying period. Dr. G, the carrier's required medical examination doctor, testified, as noted by the hearing officer in her Statement of the Evidence, that, if the claimant had not suffered a work-related injury in _____, but presented himself for an examination with all his current nonwork-related symptoms, the claimant would not be capable of working. Dr. G further testified that if the claimant did not have the nonwork-related symptoms, but had suffered the work-related injury in _____, that the claimant could do sedentary work. Essentially, the hearing officer is saying that the claimant cannot work, but that is because of all his other nonwork-related problems, and is not due to the work-related injury. The hearing officer could conclude from all the evidence that there was no narrative report which specifically explains how the claimant's compensable injury causes a total inability to work.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the decision and order.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge